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Robert Alan Kemp, D/B/A: NEVADA CENTRAL RAILROAD

Administrative Offices: Tempe, Arizona

Physical Operations: Tonopah Airport, Tonopah, Nevada

Aviation Technologies Ltd., "ATL" PRINCIPAL PLACE OF BUSINESS. TONOPAH AIRPORT, NYE COUNTY, NEVADA

Robert Alan Kemp**[D/B/A:]****NEVADA CENTRAL RAILROAD**ENTERED
Office of Proceedings

SEP 29 2008

Part of
Public Record**VIA - USPS and IMMEDIATE OFFICIAL FAX FILING**(Monday), September 29th, 2008

The Honorable Charles D. Nottingham, Chairman - STB.

The Honorable Ann K. Quinlan, Acting Secretary

Office of the Chairman and Secretary

Surface Transportation Board

395 - E Street, SW.

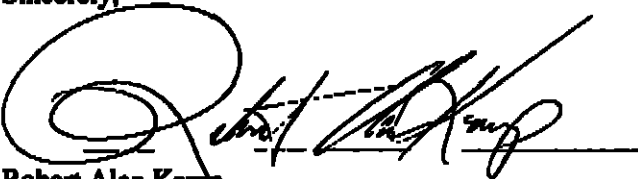
Washington, DC 20423-0001

By Emergency Fax Filing: (202) 245-0458, (202) 245-0461/64/65**RE:****Docket No. AB-33 (SUB-No. 230X)
(Union Pacific Railroad Company)****[Robert Alan Kemp's/NCR's:
[APPEAL]****Concerning: Union Pacific Railroad Company
- Abandonment Exemption -**

Dear Chairman Nottingham, Secretary Quinlan:

Please find the following **APPEAL** in the above referenced abandonment proceeding. Payment of the Fee required for the provision of the enclosed **APPEAL** is hereby included in the form of an Authorized Credit Card Payment using the appropriate STB Form attached to this filing, to Your office at the STB in Washington. Please feel free to contact me personally 24-7 at the following telephone number and or email address if you have any questions.

Sincerely,



Robert Alan Kemp,

D/B/A: **NEVADA CENTRAL RAILROAD**

Tempe, Arizona

(775) 287- 3681

atlnv13@aol.com

FILED

SEP 29 2008

**SURFACE
TRANSPORTATION BOARD****FEE RECEIVED**

SEP 29 2008

**SURFACE
TRANSPORTATION BOARD**

UNITED STATES OF AMERICA

BEFORE THE SURFACE TRANSPORTATION BOARD

AB - 33 (Sub - No. 230-X)

**UNION PACIFIC RAILROAD COMPANY
ABANDONMENT EXEMPTION
IN LASSEN COUNTY, CALIFORNIA AND
IN WASHOE COUNTY, NEVADA**

**ROBERT ALAN KEMP,
D/B/A: NEVADA CENTRAL RAILROAD, (NCR)**

[APPEAL]

Robert Alan Kemp, D/B/A: NEVADA CENTRAL RAILROAD Hereafter ("Kemp" or "Petitioner"), hereby Appeals the initial decision of the Director of the Office of Proceedings hereafter ("Director"), rejecting Petitioners OFFER OF FINANCIAL ASSISTANCE hereafter ("OFA"), timely filed by Petitioner with the Board on September 15th, 2008. .

Petitioner in addition, and in the alternative, Petitions this Board (pursuant to any applicable proceeding) to allow amendment of the Petitioners OFA by the addition of information contained within the instant Appeal, that by procedural defect and or defective legal based actions by the Director, were not made part of the original record of this OFA proceeding.

Once the additional information contained within the instant Appeal is made part of the record in this proceeding, Petitioners OFA will be complete and will successfully and factually address and exceed all objections published by the Director in his Decision entered September 19th, 2008.

On September 18th, 2008, UP filed a letter to the Board in the instant proceeding that was knowingly and unlawfully described by UP as a (Reply) to the NCR-OFA filed by Petitioner on September 15th, 2008. In Fact, the UP Reply was not a (Reply), but rather as an Unlawful and Defective (Motion To Reject and of Dismiss), NCR's OFA. At a Minimum, Petitioner had the Legal Procedural Right to Oppose the UP filing of September 18th, by filing a (Motion To Strike) said Artifice filed by UP in the form of a (Reply). Petitioner also had the right to Clarify the Record in the instant proceeding, by correcting the record to correctly indicate that the Motion To Reject and of Dismiss actually filed by UP was in fact an UNLAWFUL MOTION, and Not a Mere (Reply) as it seek' d to MOVE the Board to Execute a Requested Form of Action based on the Boards

Congressional Jurisdiction. Nor did UP Provide the necessary Fee of \$ 300.00 in order to procedurally actuate its Motion To Reject And Or Dismiss Petitioners OFA.

Petitioner on September 19th, 2008 contacted the TB Legal Liaison, Mr. Rudy St. Louis, and confirmed Petitioners Intent to timely file a SUPPELMENT to the Original OFA filed on September 15th, 2008, as well as a MOTION TO STRIKE the unlawful filing by UP in the artificial form as described by UP of a (Reply) filed by UP on September 18th, 2008.

Before Petitioner could file either the Supplement to his OFA, and of the Motion To Strike UP's Filing of September 18th, 2008, the Director deliberately with Criminal Intent violated the Federal Rules of Civil Procedure, the Procedural Rules and Guidelines as described in APA, as well as the established Rules and Procedures in which the Board Operates, and proceeded to Unlawfully Adopt and Grant the Unlawful Motion filed by UP in the self described form of a (Reply) filed by UP less than 24-Hrs., prior to said Decslon, further Violating Petitioners US-Constitutional Rights to Due Process and Equal Protection. Most important is the fact that the Director and his Staff personally Cherry Picked, and then Procedurally Sanitized the entire Docket of Information and fillings contained therein, in order to unlawfully compile information necessary to support the Wholesale Adoption of the Unlawful Motion filed by UP in the instant proceeding.

The Director in his Decision of September 19th, 2008 knowingly and Defectively relies solely on the record of information provided within the docket by UP, as well as the unlawful Motion To Reject And Or Dismiss Petitioners OFA, for which the Director deliberately and knowingly carefully constructed a Matrix in which Petitioner would, and or could NOT lawfully address, which concealed virtually all relevant facts in the current proceeding, including but not limited to the following;

- A. UP's original Exemption for Abandonment did not identify the fact that a 33-Megawatt Power Generating Facility was located less than a mile from the end of the Appx: 22-Mile Rail Line that is the subject of this proceeding that Petitioner is in the process of Legally Condemning, who's operation is critically impacted by its ability to receive its fuel supply shipments via Rail as opposed to Over Land TRUCK. This information is included in the fillings by Petitioner as part of the instant proceeding, and as such are presently known to the Director.**
- B. None of the Physical Constraints for the Utilization and Continuing Operation by Petitioner of the 220-Foot Rail Line to be acquired by Petitioner in the instant proceeding exist and are applicable as Described by both the Director as well as UP, as is the case for the Rail Line located in Los Angeles, described in STB Docket AB-33 (Sub No. 265X), for which both the Director and UP SOLELY and DEFECTIVELY RELY as the basis for opposition relating to the Operational Suitability of the 220-Foot Rail Line Petitioner now seeks to acquire here. In fact, both the Board/Director and UP very well know that the subject 220-Foot Rail Line is NOT Physically Constrained, and or is NOT Land Locked as in the case of the LA Line, and that Petitioner can Construct 2-EA., Parallel Switch Tracks adjacent to the Mainline Track, as well as a Turnout in the form of a Main Line Extension to the 220-Foot Line in a manner fully compliant with Board Regulations for Exempted Construction on or within either Private or Public Lands.**
- C. Both UP and the Director already know that Petitioner already possess' s current binding contracts for the provision of Rail Service for purposes of supporting Power Generation from a new Power Generating Customer, who will Co-Locate with Petitioner adjacent to the end of the subject 220-Foot Rail Line, as well as the established Power Plant in Wendel, CA, at the end of the 21-Mile Line subject to Abandonment that NCR can supply via: [Rail to Truck], using the intermodal**

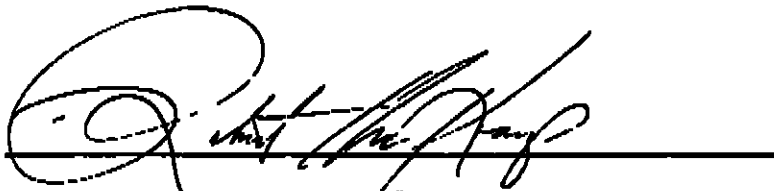
transfer capability from Petitioners acquisition of the subject 220-Foot Line, with its planned future Re-construction and Re-habilitation back to its original length of Appx: 22-Miles. Petitioner has also received letters of intent from various Commercial Construction Materials Suppliers that have already requested NCR Rail Service based on Petitioners Operation of the subject Rail Line. In the event that the Board should decide it requires disclosure of Petitioners current and planned Rail Customers for the subject Rail Line with its planned extensions, switch yards, and Turn Outs, Petitioner will supply same within 10-Days of Granting a Protection Order to Petitioner as in the case of Sonora-Arizona International, LLC., (Sonora), filed in STB Docket: AB-1081X.

- D. Both UP as well as the Board already know that the NEVADA CENTRAL RAILROAD, Nevada Corporation, has already filed Notice of Construction of an Appx: 458-Mile Heavy High Speed Mainline Railroad System located within the state of Nevada, for the expressed purpose of executing the first Heavy High Speed Freight and PAX Railroad System in the World that will in the future connect to Petitioners subject 220-Foot Rail Line to be acquired by this OFA to be initially operated as a Class-III Railroad executing interstate commerce by rail, thus the 220-Ft. Rail Line is CRITICAL to the National Railroad System.
- E. The Price Identified by Petitioner in Petitioners OFA Exceeds the Price specified by UP within UP's NLV for the 220-Foot Rail Line, and is clearly identified by Petitioner within Petitioners OFA as: \$ 5,750.00. Petitioner already possesses all necessary maintenance and construction equipment in order to both Repair and or Upgrade, Construct to the subject 220-Foot Rail Line. No Debt is owed by Petitioner relating to All Equipment owned by both Petitioner and the NEVADA CENTRAL RAILROAD, Nevada Corporation, for equipment necessary to obtain FRA Certification of the subject 220-Foot Rail Line. Costs to maintain Operation of the subject 220-Foot Rail Line will NOT exceed the remaining Balance of Funds guaranteed by the Banks Family Trust which is Set at: \$ 13,000.00. Any additional funds NOT estimated will also be covered by the 26-Member Banks Family Trust Investment Partnership. The assertion by the Director in his Decision published on September 19th, that the Form of the Entity of the Banks Family Trust will financially bear on Petitioners Financial capacity is simply stated in the recent words by UP as: "Ludicrous." The Banks Family Trust is a 26-Member Financial Investment Partnership, and is a Legally Qualified Entity by the IRS, maintains an EIN, a Business Bank Account, and is a Legally Qualified Investment Entity within the state of Pennsylvania.
- F. In the event that the Board requires the Banks Family Trust to Transfer and thus BOND Funds with the Board for purposes of demonstrating its Financial Capacity as Guaranteed to the Petitioner, Petitioner will Post Bond in the Amount of: \$ 5,750.00 to the Board for acquisition of the subject 220-Foot Rail Line within 10-Days Notice of that Decision so there can be No-REMAINING FACTUAL-Challenge to Petitioners Financial Capacity to complete the acquisition of the Subject 220-Foot Rail Line from UP. Any Additional Financial Information relating to the Banks Family Trust including its combined Cash and Credit Worthiness can and will be provided by Petitioner if required by the Board within 10-Days of the Board granting Petitioner and the BANKS FAMILY TRUST a Protective Order, in order to protect Petitioner, the Banks Family Trust, NEVADA CENTRAL RAILROAD, Corporation, AVIATION TECHNOLOGIES LTD., Corporation, from the effects of UP's continuing execution of acts of Fraud, Conspiracy, and or Industrial Economic Espionage/Theft of Trade Secrets activities further damaging Petitioners ability to Maintain the Operation of the Subject 220-Foot Rail Line. Petitioner also reserves the use of and inclusion of All Public STB Records relating to OFA's and issues of Financial Responsibility currently on file with the Board, as well as All Filings in the Instant Proceeding is

direct support of this Appeal.

- G. In STB Decision filed in AB-1081X entered by the Director on February 17th, 2006, the Director stated: "Sonora has submitted financial information, which, on its face, shows that it has access to sufficient financial resources to acquire and operate the line." And further, "Sonora's offer is equal to SPROC's estimated NLV." Petitioner hereby asserts that the (Certified and Notarized) Financial Guarantee provided and noticed to the Board by the BANKS FAMILY TRUST in this proceeding is just as financially Binding and is as Factually Viable as other letters that have been provided by other Independent Financial Guarantors, including but Not Limited to those independent Guarantees provided by mere Salvage Companies, as opposed to qualified Financial Investment Partnerships, as in the instant case of the Banks Family Trust for which the Board has accepted in the words of the Director: "On Its Face." If the Director desires to Charge Mr. Banks with Fraud, then GET IT ON..., in the meantime, the Director must abide by his own recent and historic standards, and dismiss the Groundless Defamatory Actions by UP to Destroy the NCR and Petitioners 33-Year Construction Effort.


Petitioner based on information provided herein, as well as that published as Public Record by the Board concerning the Execution, Standards, and Acceptance of OFA's, as well as all documents in the instant proceeding, Appeals to the Board to Accept Petitioners OFA as filed by Petitioner September 15th, 2008, and overturn the Directors Previous Defective Decision of September 19th, 2008, and order UP to sell the Subject 220-Foot Rail Line to Petitioner in a Time Period NOT EXCEEDING 60-Days from the filing of this Appeal.



Respectfully Submitted this 29th, Day of September, 2008, by Petitioner:
Robert Alan Kemp, D/B/A: NEVADA CENTRAL RAILROAD, (NCR).
775-287-3681 OR atlnv13@aol.com

CERTIFICATE OF SERVICE

I, Robert Alan Kemp, D/B/A: NEVADA CENTRAL RAILROAD certify that on this 29th day of September, 2008, that I made service of the attached original NCR [APPEAL] in AB - 33 (Sub - No. 230X) upon the Surface Transportation Board, by US mail, and mailed a Single Copy of same to all Parties, Agencies, and Individuals, listed for Service within the Abandonment: AB - 33 (Sub 230-X), by depositing same into the United States First Class Mail with prepaid postage, and also Directly to the STB via IMMEDIATE FAX DELIVERY FILING to: (202) 245-0458 / 0461 / 0464 / 0465.



Robert Alan Kemp, D/B/A/
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